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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,425	01/16/2004	Donald G. Bell	12082-0002	5640
25461 7590 10/31/2007 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592			EXAMINER LEVY, NEIL S	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 10/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/758,425

Applicant(s)

BELL, DONALD G.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/9/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group I in the reply filed on 7/27/07 is acknowledged.

The species election requirement is withdrawn.

### ***Claim Rejections - 35 USC § 112***

Claims 1-10,18-27 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Foul-tasting & scent material, critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). No example is provided of any specific compound that is recognized as hated by deer, & applicable in the equipment disclosed for use to repel any animal. The same is true of the scent; there is no means disclosed to enable one to provide either of these undisclosed materials in quantity or over time, in order to effectively repel any animal.

There is no methods presented for one to determine what constitutes foul taste, for any animal, nor is there any means of determining hate, by a deer.

There is no basis provided for one to determine any particular order of triggering activation of release of air, water, light, sound, scents or flavours.

The factors to be considered in determining whether a disclosure meets the enablement requirement of 38 U. S. C. 112, the first paragraph have been described in *re Wands*, 8 USPQ2D

Art Unit: 1615

1400 (Fed Cir. 1988). Among these factors are (1) the nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims. (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary. When the above factors are weighed, it is the examiner's position that instant disclosure fails to meet the enablement requirement for the following reasons:

- (1) The nature of the invention: claims are to unqualified control and repelling by non-specific agents,
- (2) The state of the prior art shows the use of a variety of materials as specific predator repellants for specific prey.
- (3) The relative skill of those in the art. The relative skill of those in the art is high.
- (4) The predictability or unpredictability of the art. The unpredictability of the art is very high.
- (5) The breadth of the claims. The claims are very broad, as repelling can not be proven to have been performed
- (6) The amount of direction or guidance presented. There are none; or specific effects-the results expected are presumptive, no guidance given for determination if in fact the unidentified scents or flavours did repel any animal
- (7) The presence or absence of working examples. There are none.
- (8) The quantity of experimentation necessary is extensive-

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 1615

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Martel-2001.

Martel describes means of repelling an animal, tiger, from an area(p.202) by (p. 203) sensing the animal in an area & triggering its senses; sound, by whistling, & sight, by starring into its eyes, followed by touch & wave motion, then foul-smelling vomit(p 203-205). Light from a flare is also useful as a repellent, with associated sound.(p. 200, top).

Claims 1-3,5,6 are rejected under 35 U.S.C. 102b) as being anticipated by Bennett et al '88.

Bennet shows sensing the presence of an animal is required (fig. 16-F, p. 341) followed by fouling water supply to provide an undesirable sensation resulting in repelling the animal, in this case birds(p.341, 3<sup>rd</sup> paragraph, col. 1). 4 repellents are taught that invoke the senses of touch, sound, sight, & odor after sensing the presence of the birds.(p. 342), REPELLENTS). Jets of water & flashing lights & sound are disclosed as useful (p. 343) , as is odor(p. 344).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 18-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett and Jincks US 20030058740A1 in view of Burman 5009192 & admissions of the specification.

Benett (above) recites various methods of repelling animals, utilizing all senses, but does not discuss automatic triggering & controlled combinations. Jincks discloses it is old to repel by sound & light [0002, 0003]. It is also well known to detect the presence of an animal[0006], use of computers to control stimuli is also well known. These include light, sound, taste & smell, all known as useful deterrent triggers[0012]. Further, variation in the application of the sequence of stimuli emission & duration of exposure is controllable [0077, fig. 7] after sensing an animal. All of the sensorium affected, control means available, & mechanism of use, as of the invention as is claimed is shown to be known, by Jincks & Bennett. Specific elements are not disclosed, stakes, for example. Burman shows this, attached to housing (Fig. 1). Demonstrated is motion sensing of an animal presence followed by spraying water, & (col. 3, bottom, 4, top) air, while emitting sound & touch, the water application to the animal & hated taste stimuli, not otherwise defined in the instant specification, as dye(col. 3, lines 55-60).

The instant specification acknowledges that all the mechanisms of the 5 sense stimuli are known repellants, & that the means & mechanisms for eliciting these sensations & identifying the presence of animals is also well known.

Art Unit: 1615

Given the means to sense the presence of an animal, the means to respond automatically when an animal is sensed with any number of stimuli of aversive potential directed at the sensed animal ;

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of Bennett/Jincks modified as desired to increase likelihood of continued repulsion of an undesired animal pest.

All the critical elements of the instant are disclosed. The ingredients & stimuli are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged effects.

Applicant has not provided any objective evidence of nonobvious or unexpected results that the administration of the particular ingredients' or sequence thereof provides any greater or different level of prior art expectation as claimed, and the use of components for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized stimuli & detection means, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

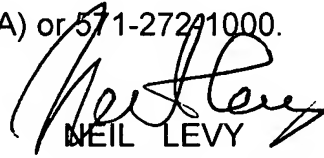
Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NEIL LEVY  
Primary Examiner  
Art Unit 1615

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